

MONTANA LEGISLATIVE HISTORY

Chapter 245 19 79

Bill H _____ S 278 Original bill & history ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 06 ☒ C

Hearing Date(s) Feb 05 ☒ C

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Date Out Mar 06 ☒ C

No Senate Judiciary minutes could be located concerning action taken on this bill.

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

CHAPTER NO. 245.

SENATE BILL NO. 278

INTRODUCED BY THOMAS, DUSSAULT, ROSENTHAL, O'CONNELL,
MEYER, FABREGA, VAN VALKENBURG, TROPILA

IN THE SENATE

January 29, 1979	Introduced and referred to Committee on Judiciary.
February 10, 1979	Committee recommend bill do pass as amended. Report adopted.
February 13, 1979	Printed and placed on members' desks.
February 14, 1979	Motion pass consideration.
February 15, 1979	Second reading, do pass.
February 16, 1979	Considered correctly engrossed.
February 17, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 19, 1979	Introduced and referred to Committee on Judiciary.
March 6, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 7, 1979	Second reading, concurred in.
March 9, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 10, 1979	Returned from second house. Concurred in as amended.
March 12, 1979	Second reading, pass consideration.
March 13, 1979	Second reading, amendments adopted.
March 14, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

1 *Sen. Bill No. 278*
2 INTRODUCED BY *Thomas Messant Dan O'Connell*
3 *Meyer George Van Valkenburg Groppe*
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY PROVIDE
5 FOR THE USE OF INTERPRETERS FOR THE DEAF IN CERTAIN
6 ADMINISTRATIVE OR JUDICIAL PROCEEDINGS; TO REPEAL SECTION
7 3-1-316, MCA; AND PROVIDING AN EFFECTIVE DATE."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Policy. It is the policy of this state to
11 secure the constitutional rights of deaf persons who,
12 because of impairment of hearing or speech, are unable to
13 readily understand or communicate spoken language and who
14 consequently cannot be fully protected in legal proceedings
15 unless qualified interpreters are available to assist them.

16 Section 2. Definitions. As used in [this act], the
17 following definitions apply:

18 (1) "Appointing authority" means the presiding judge
19 or justice of any court, the chairman of any board,
20 commission, or authority, the director or commissioner of
21 any department or agency, or any other person presiding at
22 any hearing or other proceeding in which a qualified
23 interpreter is required pursuant to [this act].

24 (2) "Deaf person" means a person whose hearing is
25 totally impaired or whose hearing is so seriously impaired

1 as to prohibit the person from understanding oral
2 communications when spoken in a normal conversational tone.
3 The term further includes, but is not limited to, a person
4 who, because of loss of hearing, cannot communicate spoken
5 language.

6 (3) "Principal party in interest" means a person who
7 is a named party in any proceeding or who will be directly
8 affected by the decision or action which may be made or
9 taken.

10 (4) "Qualified interpreter" means an interpreter
11 certified by the department of social and rehabilitation
12 services.

13 (5) "Intermediary interpreter" means a knowledgeable
14 deaf person who, because of his intimate acquaintance with
15 deaf persons who use mainly natural gestures for
16 communicating, can be used as an intermediary between the
17 deaf person and a qualified interpreter.

18 Section 3. Deaf person as participant in judicial or
19 administrative proceeding -- interpreter to be used. A
20 qualified interpreter shall be appointed as follows:

21 (1) In any case before any court or a grand jury in
22 which a deaf person is a party, either as a complainant,
23 defendant, or witness, the court shall appoint a qualified
24 interpreter to interpret the proceedings to the deaf person
25 and interpret his testimony or statements and to assist in

1 preparation with counsel.

2 (2) At all stages in any proceeding before any agency
3 of the state or governing body or agency of a local
4 government in which a deaf person is a principal party in
5 interest, either as a complainant, defendant, witness, or
6 suppliant, the agency or governing body shall appoint a
7 qualified interpreter to interpret the proceedings to the
8 deaf person and to interpret his testimony or statements.

9 (3) (a) In any proceedings in which a deaf person may
10 be subjected to confinement or criminal sanction or in any
11 proceeding preliminary thereto, including a coroner's
12 inquest, grand jury proceedings, and proceedings relating to
13 mental health commitments, the presiding judicial officer
14 shall appoint a qualified interpreter to assist the deaf
15 person throughout the proceedings.

16 (b) Upon apprehending or arresting a deaf person for
17 an alleged violation of a criminal law and prior to
18 interrogating or taking a statement of the deaf person, the
19 arresting law enforcement official shall make available to
20 the person, at the earliest possible time, a qualified
21 interpreter to assist the person throughout such
22 interrogation or taking of a statement.

23 (c) No statement, written or oral, made by a person
24 who is deaf in reply to a question of a law enforcement
25 officer or any other person having a prosecutorial function

1 in any criminal or quasi-criminal proceeding may be used
2 against that deaf person unless either the statement was
3 made or elicited through a qualified interpreter and was
4 made knowingly, voluntarily, and intelligently or, in the
5 case of waiver, the court makes a special finding that any
6 statement made by the deaf person was made knowingly,
7 voluntarily, and intelligently.

8 Section 4. Preliminary determination. The appointing
9 authority may not appoint a qualified interpreter in any
10 case until he makes a preliminary determination that the
11 qualified interpreter is able to accurately communicate with
12 and translate information to and from the deaf person in the
13 case.

14 Section 5. Intermediary interpreter to be used. If a
15 qualified interpreter states that he is unable to render a
16 satisfactory interpretation and that an intermediary
17 interpreter will improve the quality of interpretation, the
18 appointing authority shall appoint an intermediary
19 interpreter to assist the qualified interpreter subject to
20 the same provisions that govern a qualified interpreter
21 under [this act].

22 Section 6. Interpreter in full view. In any action or
23 proceeding in which an interpreter is required to be
24 appointed, the court or administrative authority may not
25 commence proceedings until the appointed interpreter is in

1 full view of and spatially situated to assure proper
2 communication with the deaf person or persons involved as
3 participants.

4 Section 7. Coordination of interpreter requests. (1)
5 Whenever an appointing authority is required to appoint an
6 interpreter, the authority shall request the department of
7 social and rehabilitation services to furnish the authority
8 with a qualified interpreter at a time and place and for a
9 period specified by the authority. If the choice of
10 qualified interpreter does not meet the needs or wishes of
11 the deaf person, the appointing authority shall appoint
12 another qualified interpreter.

13 (2) The Montana association of the deaf may assist the
14 department of social and rehabilitation services in
15 developing standards for the certification of interpreters
16 and in preparing and continually updating a listing of
17 qualified and available interpreters.

18 Section 8. Oath of interpreter. Every interpreter
19 appointed to interpret for a deaf person, before entering
20 upon his duties, shall take an oath that he will make a true
21 interpretation in an understandable manner to the person for
22 whom he is appointed and that he will repeat the statements
23 of such person in the English language to the best of his
24 skill and judgment.

25 Section 9. Compensation. An interpreter appointed to

1 interpret for the deaf is entitled to receive a reasonable
2 fee for his services, together with his actual expenses for
3 travel and transportation. The appointing authority shall
4 set the fee. When the interpreter is appointed by a court,
5 the fee shall be paid out of the county general fund; and
6 when the interpreter is otherwise appointed, the fees shall
7 be paid out of funds available to the appointing authority.

8 Section 10. Waiver. The right of a deaf person to an
9 interpreter may not be waived except by a deaf person who
10 initiates a request for a waiver in writing. Such waiver is
11 subject to the approval of counsel to the deaf person, if
12 existent, and is subject to the approval of the appointing
13 authority.

14 Section 11. Privileged communications. Any information
15 that the interpreter gathers from the deaf person pertaining
16 to any proceeding then pending shall at all times remain
17 confidential and privileged, on an equal basis with the
18 attorney-client privilege, unless such deaf person desires
19 that such information be communicated to other persons.

20 Section 12. Severability. If a part of this act is
21 invalid, all valid parts that are severable from the invalid
22 part remain in effect. If a part of this act is invalid in
23 one or more of its applications, the part remains in effect
24 in all valid applications that are severable from the
25 invalid applications.

1 Section 13. Repealer. Section 3-1-316, MCA, is
2 repealed.
3 Section 14. Effective date. This act is effective on
4 passage and approval.

-End-

MIKE MELOY: Montana Trial Lawyers. How many times have you had a bill on insurance premiums and the assertion is that the rates are very high and you want to know what is causing it. He explained some of the reasons why costs are so high and what goes into making up those rates. We oppose this bill.

SENATOR HAZELBAKER: I will submit some figures that the insurance department has and also from each insurance company when they file their annual report.

REPRESENTATIVE KEYSER: I have a few problems with this. When we had these hearings in 1977 we had constant hearings on malpractice and one of the areas very conspicuous by their absence was the insurance companies.

JO DRISCOLL: Chief Deputy, Insurance Commission. This information is very misleading. She went through the forms and talked of the expenses, the claim costs and other problems. She commented that the public is going to be hurt because this is not the true picture. She discussed professional liability as it pertained to the insurance industry. She exhibited a book that is currently being used by the department to compile information.

REPRESENTATIVE SCULLY: If you can show me in that book, Montana earned premiums, the trial ratios, the reserves, the interest ratios, I want to see it. Why wasn't that information presented to the committee.

JO DRISCOLL: Tom Hayden testified many times at the hearings.

Representative Seifert asked how much effort it takes to compile the information and Jo Driscoll answered, it doesn't take all that long, it just didn't seem to be accurate and caused confusion.

There was no other discussion and the hearing closed on Senate Bill 86.

SENATE BILL NO. 278: Senator Thomas. This bill will provide for the use of interpreters for the deaf, in certain kinds of judicial proceedings. When we had the hearing in the Senate we lined the halls with people. But this time we only brought a few from the deaf and blind school in Great Falls.

MR. McDOWELL: This is a good bill. From my own experience I would like to tell you the need for it. Since I am from the deaf and blind school in Great Falls, during the past several years some things have occurred which involved a deaf person in legal proceedings. I was called upon to interpret for several persons when they have been called into a court of law, someti

for a very serious matter. The need comes about because I don't think it is provided in many cases, and an interpreter is sometimes hard to find and we need good people to serve in that way. But now the SRS has a service for deaf people which is the proper place for courts of law or if need be to go there and qualify to serve as an interpreter.

BETTY VAN TIEGAN:

The deaf people are very pleased with this bill and we encourage your consideration in its passage. This gives full protection to deaf people. Sometimes when someone has to go court and they are deaf, they might be left there without an interpreter and this is very time consuming. With the help of our interpreter we can be first-class citizens like everyone else.

WM. ROMINE:

Montana Sheriffs and Peace Officers. Basically we support this bill, but one of the problems is traffic offenses and having to find an interpreter. The areas with traffic offenses should be exempted out. I think the bill should be amended, in section 9, page 6, which deals with compensation. The sheriffs budgets are set by the County Commissioners. Is the sheriff the appointing officer. It should be made clear. The other question I have is the granting of waiver, lines 14 to 16, section 10. If they don't have an interpreter they are not effectively waiving their rights or understanding their rights.

SENATOR THOMAS:

I want to offer some amendments. We would like to have change the part that the sheriffs and peace officers are concerned about.

There were no questions and no further discussion and the hearing closed on

House Bill No. 278.

HOUSE BILL NO. 293:

Senator Thomas. This is a restitution bill. The reason is, number 1, to provide a mechanism for rehabilitating a youth who has destroyed property. And number 2, if a youth causes some kind of vandalism, to make some kind of restitution to the person whose home has been broken into.

GERALD W. METZGER:

8th Judicial District, Youth Court Services. There are four reasons why we need a restitution bill. 1. To provide specific legal sanction. It is not specifically stated in the code now and the only way you can do it is through the judge. 2. The second reason is to provide due process of the youth and this again makes the judge responsible for the amount of money to be paid to the victim. 3. It goes back to 1976 and the New Jersey Supreme Court case where it was ordered that the only one to order restitution is the Youth Court Judge. He gave examples of trouble kids get into and once they are involved in a recidivist act. By this act being included we are looking at making the youth responsible and

March 6, 1979

SENATE BILL NO. 232:

Representative Kemmis suggested an amendment. After some discussion Representative Lory moved "not concurred in". Representative Keyser moved a substitute motion "be concurred in". Representative Keedy suggested there should be an amendment on page 3, lines 9, 10 and 11. After more discussion it was decided to wait on the amendments and see how the vote turned out and then amend if necessary. The question was called and on a roll call vote the motion failed by 9 to 7. The vote was reversed and the bill did not pass by 9 to 7.

The bill will be held until it is discussed with the sponsor. He has possible amendments that may change the opinion of the committee.

SENATE BILL NO. 153:

Representative Lory moved "be concurred in". The motion carried with the vote unanimous. Representative Lory will carry on the floor.

SENATE BILL NO. 291:

Representative Keyser moved "be concurred in". Representative Teague presented amendments. (copy attached) Representative Keyser moved the adoption of the proposed amendments, and the motion carried with the vote unanimous. Representative Keyser moved "be concurred in as amended". The motion carried with the vote unanimous. The bill will be held for the Elections sub-committee to see if it is covered in SB 65.

SENATE BILL NO. 215:

Representative Roth moved "be concurred in". The suggestion was made that some amendments would be necessary. Representative Keedy moved to amend page 1, the title, change 12 to 14. The motion carried with the vote unanimous. Representative Kemmis moved to amend on page 2, line 2. The motion carried with the vote unanimous. (copy attached)

Representative Roth moved "be concurred in as amended. The motion carried with the vote unanimous. Representative Keedy will carry on the floor.

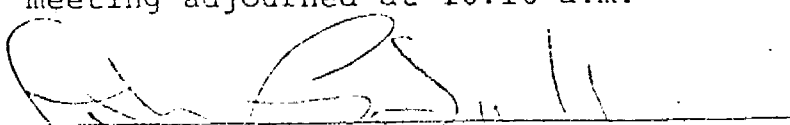
SENATE BILL NO. 281:

Representative Keyser moved "be concurred in" and the motion carried with the vote unanimous. Representative Keyser will carry on the floor.

SENATE BILL NO. 278:

Representative Keyser moved proposed amendments. The motion carried with the vote unanimous. Representative Lory moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Kemmis will carry if Representative Dussault does not, since she is one of the sponsors and may be willing to carry it.

There was no further business and the meeting adjourned at 10:10 a.m.



MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 5, 1979

The twenty-sixth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman, on the above date in room 331 of the capitol building at 9:35 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 207:

Senator Hafferman, from district 11, Lincoln County, gave an explanation of this bill, which is an act to adopt the uniform recognition of acknowledgments act and to conform other statutory provisions thereto. He stated that he was a notary public and he said that this changes the law a great deal and amends and repeals certain sections. He said that this bill does give authority to people overseas to notarize deeds.

There were no further proponents and no opponents.

There were a few questions from the committee and the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 278:

Senator Thomas gave an explanation of this bill which is an act to generally provide for the use of interpreters for the deaf in certain administrative or judicial proceedings. He stated that this legislation has been worked on for two years and he said that the policy statement of this bill was on page 1, lines 9 through 15. He introduced Floyd McDonell, the superintendent for the School for the Deaf and Blind.

Mr. McDonell stated that they have studied several bills around the United States in connection with this matter and this bill represents model legislation that has been passed in about sixteen states.

Mrs. Van Tegkem from the Montana School for the Deaf and the Blind stated that she was very pleased to be treated like a first-class citizen with an equal voice and she said that if a deaf person has to write down everything that this kills the enthusiasm of those who have to deal with the deaf. She said that an interpreter insured an equal voice.

Mr. Jim Pederson, representing the Vocational Rehabilitation Council, stated that it has been a problem for many to get interpreters for deaf adults and that this bill will strengthen that.

Hal Millior, a parent of a deaf fourteen-year-old and also representing the Montana school for the Deaf and Blind, stated that he would support some changes, that there is a problem on page 2 on lines 10 and 11 wherein it defines a qualified interpreter; and he stated that there is now an agency that determines the qualifications and that the department of social and rehabilitation services would maintain a list of qualified interpreters and if one could not be found, they could be given the authority to find interpreters.

He also said that when a deaf person takes a driver's test, they will usually not allow an interpreter to come along, and they would like to make sure that this includes all these people with the word "agency".

Jack Olson, representing Montana State University - speech department - stated that he was an audiologist and he wondered if the referral agency should be someone other than the department of social and rehabilitation services and that probably they would not want to take this on. He stated that the Montana Services for the Deaf has a list of members and probably they should be the agency to coordinate this state-wide service.

He also commented on section 9, compensation for an interpreter and said that he felt that SRS should set up the fees and that there should be specific guidelines for these fees as they are concerned that the fees may be too low and it would seem that it should be necessary to follow a fee schedule. He was concerned that in a legal situation where there is a jury that a person who has been brought in to interpret should have some legal training, that it must be someone who has had expertise, and he stated that it is no cup of tea for a legal interpreter to go through what they have to go through. He stated that there were only five specific places in the United States where you can get this kind of training. He also felt that if a person cannot be found, they should go out of state to bring someone in who is qualified.

Bob Donaldson, director of the department of social and rehabilitation services, the vocational rehabilitation program stated that they were in favor of the bill and they certainly would not set up another registry for certifying interpreters and it was the same with the fee schedule. He stated that it is a reasonable bill and we can get together with them and set up some rules under which to operate without adding any new staff or costs to the state of Montana.

There were no further proponents and no opponents.

Senator Towe said that he understands that this is more than just legal proceedings or proceedings of a quasi-legal nature and where the word "proceedings" is used that this would not include driver license situations and others.

Mr. McDonnell stated that he thought it was the intent of the provision to include things like that - for example, condemnation proceedings, zoning changes, etc.

Senator Towe stated that they would cover most of these with the word, "proceedings" but you are not going to pick up drivers licenses and if you want to include those, you must have some other language.

Senator Towe also questioned if there were any other situations other than a driver's license and Ms. Van Tegkem stated there are other cases in many other states and some day it may come here - such as beautician licenses, real estate licenses, etc.

Senator Turnage suggested that maybe a better choice of words would be applicable.

Senator Towe wondered if the whole matter of interpreters through visual means is that adequate in the real serious trial - can most deaf people fully understand the proceedings against them by watching the sign language.

Mr. McDonnell said yes, that two or three years ago, two deaf people got in trouble in Missoula, they were charged with kidnapping and attempted homicide, the court asked him to come in and he helped with the conversation with the attorneys, the district attorney, and with the judge and this was a jury trial. He stated that if those two deaf people had not had an interpreter, it would have been a mockery of justice because there is no way for them to know what the attorneys were talking about, the questions, etc. and he felt it was a matter of necessity. He stated that his position of being an interpreter was only official after the judge was satisfied that he was qualified and acceptable to the deaf people themselves so they had an opportunity to make a decision on his skills or lack of skills and that the judge made sure of that.

Senator VanValkenburg stated that their firm was involved in the representation of those people and he felt that they were adequately represented. He said that he thinks that it is the attorney's primary responsibility to see that it is being done and he did not think that the legislature can guarantee that this will be done. He said the attorney must understand that the client is understanding the proceedings; and he said that before the interpreter came into the picture, he communicated with them by writing and that his was a very difficult situation. He stated that deaf individuals do not have a very good writing skill but they do have good communication skills by sign language.

Senator Lensink asked if they could work out any amendments they might like the committee to consider.

Senator Turnage questioned Dr. Olson about the registry of qualified interpreters and Dr. Olson explained this.

There being no further questions, the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 219:

Senator Turnage stated that this bill was an alternative to Senate Bill 202. This bill is an act to create a new judicial district by splitting the fourth district into two districts consisting of Mineral, Sanders, and Lake Counties and Missoula and Ravalli Counties respectively. He said that if we approve the other bill than this bill should not be further considered. He said that a resolution will be introduced to study all the districts in the state and this matter could be handled in that area. He said that he would not suggest that we do anything with this bill at this time until we act on the other bill.

Margaret Davis, representing the League of Women Voters said that she concurred in Senator Turnage's remarks.

There were no further proponents and no opponents.

There being no questions, the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 296:

Senator VanValkenburg gave an explanation of this bill, which would specifically include tribal judges on the list of officials authorized to solemnize marriage.

Mere Lucas, representing DCA of Indian Affairs, gave a statement in support of this bill.

There were no further proponents and no opponents.

Senator Olson questioned as to what the qualifications were for a tribal judge and Mr. Lucas replied that they must be well-respected within the Indian community. Senator VanValkenburg stated that the tribal council usually picks the tribal judge and he does receive some training.

Senator O'Hara asked what other things do they handle. Mr. Lucas stated each tribe has their own law and own codes. They handle misdemeanor cases but felony cases are handled by the federal courts.

Date 3/5/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Bills to be Heard by Senate Judiciary Committee
On Monday, February 5, 1979

SB 219 (Turnage)

Proposed bill: would create a new judicial district by splitting the 4th district. The 4th district would then consist of Missoula and Ravalli Counties. The new 20th district would consist of Mineral, Lake, and Sanders Counties.

SB 278 (Thomas, Dussault)

Current law: 3-1-316 requires the appointment by the court of an interpreter for a deaf person who is a party to any legal proceeding.

Proposed bill: provides for a more specific and detailed handling of this situation; requires the appointment of an interpreter in administrative as well as judicial proceedings and repeals 3-1-316.

Section 1. Policy

Section 2. Definitions.

Section 3. Specifies the situations in which an interpreter must be appointed - in any proceedings (1) before a court or grand jury (2) before a governmental agency, and (3) in which the deaf person may face confinement or criminal sanction; and (3) provides that a deaf person who is arrested must be allowed an interpreter as soon as possible before interrogation or taking of a statement and provides that a statement of a deaf person can not be used against the deaf person unless the statement was made knowingly, voluntarily, and intelligently or in the case of a waiver, the court makes a special finding that the statement was made knowingly, voluntarily, and intelligently.

Section 4. Before appointment, it must be determined that there can be accurate communication between the deaf person and the interpreter.

Section 5. An intermediary interpreter can be used if the qualified interpreter can not adequately communicate with the deaf person.

Section 6. Proceedings can not begin until the interpreter is in full view of the deaf person.

Section 7. Coordination of interpreter requests - the department of social and rehabilitation service shall furnish a qualified interpreter; the Montana Assoc. of the Deaf may assist the department in developing standards for certification of interpreters and preparing lists of qualified and available interpreters.

Bills to be heard by Sen. Judiciary Committee
Monday, Feb. 5, 1979.

Section 8. Interpreters shall take an oath.

Section 9. Interpreters are entitled to a reasonable fee plus actual expenses for travel and transportation. If appointed by a court, the fee will come from the county general fund; otherwise, it is to be paid out of funds available to the appointing official.

Section 10. The deaf person can request a waiver of the right to an interpreter, subject to approval of his counsel, if he has one, and the appointing authority.

Section 11. Communication between the deaf person and his interpreter is confidential.

Section 12. Severability.

Section 13. Repeals 3-1-316

Section 14. Effective on passage and approval.

SB 296. (Van Valkenburg)

Section 1. amend 40-1-301.

Proposed bill: specifically includes tribal judges on the list of officials authorized to solemnize marriage.

SB 207 (Hafferman)

An act to adopt the uniform recognition of acknowledgments act which concerns the recognition in the enacting state of acknowledgments and other notarial acts performed elsewhere for use in the enacting state. It describes in general terminology the persons whose notarial act will be recognized in the enacting state so that new designations of officers will not require additional amendments; lists officers whose performance of notarial acts will be recognized in this state; prescribes where authentication of the power of the officer is necessary for recognition of acknowledgments; states what the performing notarial act shall certify; states what certificates by officer taking acknowledgment will be recognized. It also prescribes a short form of acknowledgment which will be recognized if used, but does not prohibit use of other forms.

All the Act does is provide that whenever the laws of the enacting state require an act of acknowledgment to be performed and whenever they authorize a notary public of enacting state to perform the act, then the officers designated in the proposed act may perform the act and it is to be recognized in the enacting state.

The bill conforms other statutory provisions to the Act and repeals 1-5-103 dealing with proofs and acknowledgments

SENATE BILL NO. 278

INTRODUCED BY THOMAS, DUSSAULT, ROSENTHAL, O'CONNELL,

MEYER, FABREGA, VAN VALKENBURG, TROPILA

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY PROVIDE FOR THE USE OF INTERPRETERS FOR THE DEAF IN CERTAIN ADMINISTRATIVE OR JUDICIAL PROCEEDINGS; TO REPEAL SECTION 3-1-316, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Policy. It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

Section 2. Definitions. As used in [this act], the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to [this act].

(2) "Deaf person" means a person whose hearing is

totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications ~~when-spoken-in-a-normal-conversational-tone~~. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(4) "Qualified interpreter" means an interpreter certified ~~LISTED~~ by the department of social and rehabilitation services AS PROVIDED IN [SECTION 7].

(5) "Intermediary interpreter" means a knowledgeable deaf person who, because of his intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

Section 3. Deaf person as participant in judicial or administrative proceeding -- interpreter to be used. A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which, a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person

1 and interpret his testimony or statements and to assist in
2 preparation with counsel.

3 (2) At all stages in any proceeding ~~OF A JUDICIAL OR~~
4 ~~QUASI-JUDICIAL NATURE~~ before any agency of the state or
5 governing body or agency of a local government in which a
6 deaf person is a principal party in interest, either as a
7 complainant, defendant, witness, or suppliant, the agency
8 or governing body shall appoint a qualified interpreter to
9 interpret the proceedings to the deaf person and to
10 interpret his testimony or statements.

11 (3) (a) In any proceedings in which a deaf person may
12 be subjected to confinement or criminal sanction or in any
13 proceeding preliminary thereto, including a coroner's
14 inquest, grand jury proceedings, and proceedings relating to
15 mental health commitments, the presiding judicial officer
16 shall appoint a qualified interpreter to assist the deaf
17 person throughout the proceedings.

18 (b) Upon apprehending--or arresting a deaf person for
19 an alleged violation of a criminal law and prior to
20 interrogating or taking a statement of the deaf person, the
21 arresting law enforcement official shall make available to
22 the person, at the earliest possible time, a qualified
23 interpreter to assist the person throughout such
24 interrogation or taking of a statement.

25 (c) No statement, written or oral, made by a person

1 who is deaf in reply to a question of a law enforcement
2 officer or any other person having a prosecutorial function
3 in any criminal or quasi-criminal proceeding may be used
4 against that deaf person unless either the statement was
5 made or elicited through a qualified interpreter and was
6 made knowingly, voluntarily, and intelligently or, in the
7 case of waiver, the court makes a special finding that any
8 statement made by the deaf person was made knowingly,
9 voluntarily, and intelligently.

10 ~~10) THIS SUBSECTION (3) DOES NOT APPLY TO~~
11 ~~APPREHENSIONS, ARRESTS, OR STATEMENTS INVOLVING A VIOLATION~~
12 ~~OF THE TRAFFIC LAWS OF MONTANA.~~

13 Section 4. Preliminary determination. The appointing
14 authority may not appoint a qualified interpreter in any
15 case until he makes a preliminary determination that the
16 qualified interpreter is able to accurately communicate with
17 and translate information to and from the deaf person in the
18 case.

19 Section 5. Intermediary interpreter to be used. If a
20 qualified interpreter states that he is unable to render a
21 satisfactory interpretation and that an intermediary
22 interpreter will improve the quality of interpretation, the
23 appointing authority shall appoint an intermediary
24 interpreter to assist the qualified interpreter subject to
25 the same provisions that govern a qualified interpreter

1 under [this act].

2 Section 6. Interpreter in full view. In any action or
3 proceeding in which an interpreter is required to be
4 appointed, the court or administrative authority may not
5 commence proceedings until the appointed interpreter is in
6 full view of and spatially situated to assure proper
7 communication with the deaf person or persons involved as
8 participants.

9 Section 7. Coordination of interpreter requests. (1)
10 Whenever an appointing authority is required to appoint an
11 interpreter, the authority shall request the department of
12 social and rehabilitation services to furnish the authority
13 with a LIST OF qualified interpreter INTERPRETERS at-a-time
14 and--place--and--for-a-period-specified-by-the-authority. If
15 the choice of qualified interpreter INTERPRETERS does not
16 meet the needs or wishes of the deaf person, the appointing
17 authority shall appoint another qualified interpreter.

18 (2) The Montana association of the deaf may-assist AND
19 THE MONTANA REGISTRY OF INTERPRETERS FOR THE DEAF SHALL
20 PROVIDE the department of social and rehabilitation services
21 in---developing---standards---for---the---certification---of
22 interpreters-and-in-preparing-and-continually-updating WITH
23 a listing LIST of qualified and available interpreters.

24 (3) THE ONLY FUNCTION OF THE DEPARTMENT OF SOCIAL AND
25 REHABILITATION SERVICES IS TO MAINTAIN THE LIST REFERRED TO

1 IN SUBSECTION (2).

2 Section 8. Oath of interpreter. Every interpreter
3 appointed to interpret for a deaf person, before entering
4 upon his duties, shall take an oath that he will make a true
5 interpretation in an understandable manner to the person for
6 whom he is appointed and that he will repeat the statements
7 of such person in the English language to the best of his
8 skill and judgment.

9 Section 9. Compensation. An interpreter appointed to
10 interpret for the deaf is entitled to receive a reasonable
11 fee for his services, together with his actual expenses for
12 travel and transportation. The appointing authority shall
13 set the fee. When the interpreter is appointed by-a-court
14 IN A CRIMINAL PROCEEDING, the fee shall be paid out of the
15 county general fund; and when the interpreter is otherwise
16 appointed, the fees shall be paid out of funds available to
17 the appointing authority.

18 Section 10. Waiver. The right of a deaf person to an
19 interpreter may not be waived except by a deaf person who
20 initiates--a-request-for REQUESTS a waiver in writing. Such
21 waiver is subject to the approval of counsel to the deaf
22 person, if existent, and is subject to the approval of the
23 appointing authority.

24 Section 11. Privileged communications. Any information
25 that the interpreter gathers from the deaf person pertaining

1 to any proceeding then pending shall at all times remain
2 confidential and privileged, on an equal basis with the
3 attorney-client privilege, unless such deaf person desires
4 that such information be communicated to other persons.

5 Section 12. Severability. If a part of this act is
6 invalid, all valid parts that are severable from the invalid
7 part remain in effect. If a part of this act is invalid in
8 one or more of its applications, the part remains in effect
9 in all valid applications that are severable from the
10 invalid applications.

11 Section 13. Repealer. Section 3-1-316, MCA, is
12 repealed.

13 Section 14. Effective date. This act is effective on
14 passage and approval.

-End-